

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CWP-8936-2018
Date of decision: 25.09.2023

ASHA RANI AND OTHERS

.....Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. J.S. Brar, Advocate
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

Prayer in the present writ petition is for seeking compensation on account of unnatural death of Sarabjit Singh while being lodged in Central Jail, Patiala.

2. Learned counsel appearing on behalf of the petitioners contends that Sarabjit Singh, son of petitioners No.1 and 2 was an under trial in case FIR No. 139 dated 15.06.2013 under Sections 15/61/85 of the NDPS Act at Police Station Rajpura City, District Patiala alongwith one Sikander Singh son of Parkash Singh, resident of village Bheni Sahib, Ludhiana City, Punjab. The petitioners visited Sarabjit Singh on 15.01.2014, 29.01.2014, 05.02.2014 as well as on 19.02.2014 when she was informed by the deceased that the officials of the jail are torturing him for no reason or

rhyme and that they suspect Sarabjit Singh (since deceased) to be involved in a fight that had been taken place in the Jail premises. It is averred that Sarabjit Singh apprehended elimination while in custody and expressed the same to her.

3. The petitioner Asha Rani was thereafter informed on 22.02.2014, at around 11:30 A.M., that Sarabjit Singh had suffered a Cardiac arrest and was no more. They reached at Rajindra Hospital, Patiala where they were so informed and were pressurized, under intimidation, to sign papers for release of the body and for cremation thereof. After the release of the body of Sarabjit Singh, they saw that there were ligature marks around the neck of deceased Sarabjit Singh. It was thus evident that the cause of death of Sarabjit Singh was not on account of Cardiac Arrest but on account of hanging. Photographs showing the ligature mark around the neck have also been attached as Annexure P-1. The death was thus unnatural and was under suspicious circumstances, which could only be explained by respondents.

4. Counsel has placed reliance on the Post Mortem report wherein the cause of death has been mentioned as Asphyxia due to hanging which was ante mortem and sufficient to cause death in ordinary course of nature. He further points that inquest proceedings/enquiry was also conducted by Judicial Magistrate First Class, Patiala and that in the said report, the Judicial Magistrate had *prima facie* reported as under:

“From the enquiry so conducted by me, I am of the considered opinion that Sarabjit Singh has not died a natural death. As per post-mortem report, the death of under trial Sarabjit Singh had caused due to hanging, however, from the perusal of spot and pictures being clicked at site, it is otherwise.

As per the story put forth by the jail officials of Central Jail, Patiala and the site shown to the undersigned, the door was locked when the under-trial Sarabjit Singh had tried to hang himself but the perusal of photographs revealed that the alleged parna with which, under trial Sarabjit Singh has tried to hang himself was tied on the top of the door which was locked and it was not possible to tie parna in case the door was locked.

The perusal of the statements given by the Jail officials revealed that within a few minutes of locking up of barracks under trial Sarabjit Singh had hanged himself and it was during the checking in Chakki No. 11 Head warder and Roop Singh saw Sarabjit Singh hanging himself which is unbelievable, as there was no ground or reason for the under-trial to hang himself when he had met his mother 2-3 days back and there was no sign of any depression or reason to end his life.

As per the statement given by another under-trial Pankaj, who was locked in 32 Chakies and was sent to baring No. 5 & 6 on 20.2.2014 along with Sarabjit Singh, the under-trial Sarabjit Singh along with Pankaj were lodged with 84 persons and their condition was miserable and they had also reported about their problem to DSP Central Jail. On 21.2.2014, Pankaj was informed about the death of Sarabjit Singh and he was also threatened not to give statement against the officials. He has also deposed that Sarabjit Singh has died as he was beaten up, abused and threatened by the jail officials.

No doubt, no injuries were found on the body of under-trial Sarabjit Singh. However, even the question of his hanging himself does not arise except due to reason of any threat or pressure by the officials. Moreover, mark of ligature found on the neck of the deceased Sarabjit Singh was not that of a parna as shown by the jail officials at the spot as it seems to be mark of some hard substance or rope. As per statements given by the officials from Central Jail, Patiala, the deceased is

suggested to have committed suicide by hanging himself but I am of the considered view that he has not committed suicide but was shown to have died due to hanging himself. As per the circumstantial evidence and sealed parna, under trial Sarabjit Singh had not died due to hanging with that Parna at the door of barrack where he was lodged. In case, he wanted to commit suicide, he could have done during the night time also and he could have shown any signal of depression to take extreme step of hanging himself. As per the statements given by the family members of Sarabjit Singh, there was no reason for the deceased Sarabjit Singh to take his life. Even, I am of the considered view that there is mystery behind the death of Sarabjit Singh which is yet to be enquired into. The histopathological report of Vicera of Sarabjit Singh is yet to be received.

Report regarding the death of under-trial Sarabjit Singh is submitted for your kind perusal and necessary action and sealed CD and post-mortem report along with sealed parna with which, deceased Sarabjit Singh as alleged to commit suicide, is enclosed herewith along with the statements of witnesses.

5. He argued that the Judicial Magistrate, First Class had suspected the death to be unnatural and homicidal and not suicidal. The respondent jail authorities however tried to brush aside the evidence noticed and the aforesaid report by the Judicial Magistrate by casting aspersions on the Judicial Magistrate as being pre-conceived and prejudiced. The said enquiry report has, however not been set aside or disbelieved by any Court. The petitioner thereafter approach this Court in **CWP-12953 of 2014** titled as **“Asha Rani and others versus State of Punjab and others”** for seeking relief. The said writ petition was, however, disposed of vide order dated 21.08.2017 directing the Director General of Police to constitute the SIT of

the Senior Officers in the rank of IGP, DIG and AIG to determine the cause of death.

6. The SIT has thereafter conducted an enquiry into the allegation and has submitted a report averring that the deceased committed suicide by hanging with the help of material of irregular breadth like any cloth or parna and that there was no evidence to reveal that the deceased was tortured before his death.

7. Aggrieved thereof, the present writ petition had been filed, averring that it was a case of unnatural death, while in custody, and that there were no imminent external circumstances that would drive Sarabjit Singh to commit suicide, while in custody, and that the respondent State was responsible to ensure that all adequate measures are put in place for ensuring safety and security of the inmates.

8. Reply by way of affidavit of Tarsem Chand, Deputy Secretary Jails had been filed wherein they had averred that the deceased Sarabjit Singh had committed suicide and died on 22.02.2014 and that it was not a case of custodial death under any torture being extended to deceased.

9. While responding to the report submitted by the Judicial Magistrate, First Class, Patiala, doubts were cast thereupon only for the reason that there were no scuffle marks on the body and as such, the possibility of the deceased having been forcibly hanged was ruled out. It was also averred that the SIT has already examined all the aspects and that the theory propounded by the petitioner was also looked into, however, the same was found to unsubstantiated. A prayer for dismissal of the present writ petition was accordingly made.

10. A short reply by way of affidavit of Sukhamrit Singh Randhawa, PPS, Deputy Superintendent of Police, City-II, Patiala had also been filed, reiterating a similar stand.

11. A separate reply had been filed on behalf of respondents No. 3 and 6 where they had appended the report of the SIT comprising of the Inspector General of Police, Patiala Zone-I, The Deputy Inspector General of Police, Patiala range and Assistant General Inspector of Police, Crime Zone, Patiala as members thereof. It was reported by the SIT that death of Sarabjit Singh had occurred because of Asphyxia due to hanging with the help of material of irregular breadth like any cloth or parna. The SIT reported that it has placed reliance on the statement of the doctor who conducted the post mortem and stated that the ligature marks were result of some irregular thing like some type of cloth or may be parna and were not the marks that were regular as are likely to arise on account of hanging by a rope. The SIT concluded that it was a case of suicidal death. Accordingly, a prayer of dismissal of the present writ petition was made.

12. Counsel for the petitioner has rebutted that the respondents have proceeded towards dismissal of the claim of the petitioner only on the ground of absence of external injury and/or the marks being irregular. They have chosen not to examine the issue as reported by the Magistrate to the effect that the door where the deceased Sarabjit Singh was found hanging and was claimed by the respondents to be bolted. In the event the contention was correct, the parna/cloth which was used in the commission of the offence could not have been tied to the upper sill of the iron door. The design of the door had vertical bars that ran through horizontal bars in the grilled iron door of the cell. It thus could not have facilitated the commission

of offence unless the door was opened and deceased was hanged from the horizontal iron bar.

13. Further, the case of the petitioner was never to the effect that deceased Sarabjit Singh was killed with the aid of any specific type of a rope/parna, rather, the case of the petitioner always had been that the death of Sarabjit Singh was on account of suspicious circumstances and that it cannot be construed as a case of suicide. The respondent-authorities, instead of examining the case in its entirety, chose to draw the conclusion to support the stand that they had already taken in the earlier proceedings. He contends that in any case, the respondents cannot seek to exonerate themselves of their liability in the event of any harm that comes in the way of an under trial and that they are liable to compensate the petitioners for the unnatural death.

14. On the other hand, counsel for the State vehemently argues that there is no lapse/fault on the part of the respondent agencies and it is not a case of custodial death where any torture was extended to the deceased Sarabjit Singh. The respondents are thus not liable to pay any compensation on account thereof.

15. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

16. The issue as regards death of inmates/prisoners while in custody was a subject matter of consideration before the Hon'ble Supreme Court in the matter of **"Re-Inhuman Conditions 1382 Prisons in Writ Petition (Civil) No. 406 of 2013"** decided on 15.09.2017 and reported as **(2017) 10 SCC 658** wherein the Hon'ble Supreme Court has held that the death can be construed as natural only when it is caused solely by deceased and/or the ageing process. When the cause of death is external such as intentional

injury (Homicide), (Suicide), Negligence or unintentional injury (death by accident), the same would remain as a unnatural death. The guidelines were accordingly issued by the Hon'ble Supreme Court. The issue as regard compensation for unnatural deaths of the inmates, while in prison was extensively dealt with by the Hon'ble Supreme Court in the above said case by referring to the Catena of judgments of the Hon'ble Supreme Court reiterating the said position time and again. While concluding on the said aspect as regards compensation for unnatural deaths, the Hon'ble Supreme Court directed as under:

“Compensation for unnatural deaths

41. The issue of compensation for unnatural deaths in custody is no longer res integra.

*42. One of the earliest cases where this Court granted compensation in a petition under Article 32 of the Constitution is **Rudul Sah v. State of Bihar, (1983) 4 SCC 141**. That case was not one of a custodial death but was a case of illegal detention even after acquittal in a full dress trial. This Court held that the petitioner was entitled to compensation for the illegal detention and it rejected the stale and sterile objection of the State Government that the petitioner may if so advised file a suit to recover damages. This Court took the view that the refusal to pass an order of compensation would be doing mere lip service to the fundamental right of liberty of the petitioner under Article 21 of the Constitution which the State Government had so grossly violated. This Court observed that "if civilization is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy."*

*43. A little later, this Court dealt with **Sebastian M. Hongray v. Union of India, (1984) 3 SCC 82** which concerned itself with*

the disappearance of some persons while in custody. This Court was convinced that enabling the respondents to trace or locate the two missing persons at such a late stage would be to shut its eyes to reality and to pursue a mirage. It appeared to this Court that the two missing persons had actually met a tragic end in an encounter amounting to an unnatural death. This Court ordered the registration of an offence and an investigation and also directed payment of compensation to the next of kin.

44. Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 was a case where a person who was taken into police custody for investigation of a theft, was found dead near a railway track the next day. On the basis of injuries and handcuffs on his wrists, this Court concluded that it was a custodial death and compensation was awarded under Article 32 of the Constitution. It was held that a public law remedy was certainly available to claim compensation for the contravention of human rights and fundamental rights which are protected as a guarantee by our Constitution. A reference was also made to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which reads: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

45. An unnatural death in judicial custody where one person was killed by a co-prisoner was the subject matter of discussion in Kewal Pati v. State of Bihar, (1995) 3 SCC 600. It was held that as a consequence of imprisonment, a prisoner does not cease to have constitutional rights, except to the extent he or she has been deprived of them in accordance with law. Therefore, even a prisoner is entitled to protection and if he is killed while in prison, it results in a deprivation of his life contrary to the law, for which the next of kin are entitled to compensation.

46. In D.K.Basu v. State of West Bengal, (1997) 1 SCC 416 this Court recognized that at the time of ratification of the

International Covenant on Civil and Political Rights, 1966 in 1979, the Government of India made a specific reservation to the effect that the Indian legal system does not recognize a right to compensation for victims of unlawful arrest or detention and only became a party to the covenant, subject to this reservation. It was noted however, that the reservation has lost its relevance in view of the law laid down by this Court in several cases wherein compensation has been awarded for the infringement of a fundamental right of a citizen. It was also noted that while there is no express provision in the Constitution for grant of compensation, this right has been judicially evolved in cases of established unconstitutional deprivation of personal liberty or life. This Court summed up the law in the following words:-

"Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or

the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

46. Ajab Singh v. State of U.P., (2000) 3 SCC 521, Murti Devi v. State of Delhi, (1998) 9 SCC 604 and more recently Rohtash Kumar v. State of Haryana, (2013) 14 SCC 290 illustrate that custodial death is a clear violation of the prisoner's rights under Article 21 of the Constitution and relief could be moulded by granting compensation to the next of kin of the deceased.

47. In addition to the above decisions and several others rendered by this Court, almost every High Court in the country has, at one time or another, also granted compensation for the unnatural death of a person in custody, whether an undertrial or a convict. A few such illustrations may be noted:

a. Nina Rajan Pillai & Ors. v. Union of India, 180 (2011) DLT 104.

The husband of the petitioner died in judicial custody due to inadequate medical treatment given by the jail authorities. The Lt. Governor of Delhi even appointed a Commission of Inquiry headed by Justice Leila Seth, a former Chief Justice of the Himachal Pradesh High Court to inquire into the circumstances that led to the death of the petitioner's husband. The Delhi High Court

awarded compensation for the unnatural death in custody.

b. Kewalbai v. The State of Maharashtra, 2013 (3) BomCR (Cri) 601.

The victim was shot dead by a constable while in custody. The Bombay High Court awarded compensation for the unnatural death in custody.

c. Bheduki Buragohain v. State of Assam, 2013 (2) GLT 370.

The undertrial victim died in judicial custody under suspicious circumstances. The post mortem report indicated that the cause of death was asphyxia as a result of strangulation and ante mortem injuries by blunt weapons. The Gauhati High Court awarded compensation for the unnatural death in custody.

d. Madhuben Adesara v. State of Gujarat, R/SCR.A./536/2010 (unreported).

The deceased was brutally tortured by police officers while in custody and succumbed to his injuries during treatment. The post-mortem report revealed that the victim had multiple injury marks which were ante mortem in nature. The Gujarat High Court awarded compensation for the unnatural death in custody.

e. Banalata Dash v. State of Orissa & Ors., AIR 2012 Orissa 97.

The deceased was found hanging from a tree with his hands behind his back, tied at the wrist with a towel. Since the victim was in the custody of the prison authorities, compensation was awarded by the Orissa High Court for the unnatural death in custody.

f. Amandeep v. State of Punjab & Anr., (2013) 1 PLR 191.

The deceased was assaulted by a co-prisoner and succumbed to injuries in the hospital. Due to the unnatural death in custody, the Punjab & Haryana High Court awarded compensation to the next of kin of the deceased.

g. Smt. Rohini Lingam v. State, (2008) 5 MLJ 822.

The victim was murdered by his enemies while in prison. Due to the unnatural death in custody the Madras High Court awarded compensation to his next of kin.

h. Sabu & Anr. v. State of Kerala & Ors., CRP No. 1170/2015.

The victim was tortured in a police station and succumbed to his injuries. In view of the unnatural death in custody the Kerala High Court awarded interim compensation to the next of kin of the deceased until the criminal trial against the concerned police officers was concluded.

i. Ravindra Nath Awasthi v. State of U.P., 2009 2 AWC 2090 (All).

The victim was an advocate held guilty of contempt of court. While he was undergoing his sentence, he was severely beaten up by the prison authorities and succumbed to his injuries in hospital. Due to the unnatural death in custody, the Allahabad High Court directed payment of compensation to the next of kin of the deceased.

j. Mst. Madina v. State of Rajasthan & Ors., 2000 CriLJ 4484.

The victim died in police custody on account of the use of third degree methods. Due to the unnatural death in custody, compensation was awarded by the Rajasthan High Court to the next of kin of the deceased.

k. Dukharam v. State of Chhattisgarh & Ors., 2011 (3) MPHT 81.

The deceased was taken from the police station in order to recover stolen articles alleged to have been hidden by him at a secret place. He was brought to a pond and compelled to dive into the pond. At that time he was handcuffed and in chains. Subsequently, the dead body of the deceased was found floating in the pond. In view of the unnatural death while the deceased was in the custody of police officers, the Chhattisgarh High Court awarded compensation.

l. Santosh Kumari v. State of H.P. & Ors., 2008 ACJ 1684

The victim died while he was in police custody and it was found that he had injuries on his head, shoulders, eyes, knees and private parts. He died in hospital as he was not given medical assistance in time. In view of the unnatural death while in custody, the Himachal Pradesh High Court awarded compensation to the next of kin of the deceased.

m. State of Jammu & Kashmir v. Sajad Ahmad Dar, LPAHC No. 36/2015.

The victim died due to cardio pulmonary arrest while detained in the District Jail under the Jammu and Kashmir Public Safety Act, 1978. It was held that death was due to carelessness, non-seriousness and negligence in not extending medical treatment. In view of the unnatural death in custody the Jammu & Kashmir High Court awarded the compensation to the next of kin of the deceased.

n. Mrs. Meena Singh v. State of Bihar, 2001 CriLJ 3573.

The victim was attacked and killed by co-prisoners by the use of chhura, iron rods and belts etc. The next of kin

of the deceased were awarded compensation by the Patna High Court for the unnatural death of the victim in custody.

***o. Lawyers for Justice (Non-Government Organization)
v. State of M.P., AIR 2015 Madhya Pradesh 212.***

The victim was facing trial for offences under Section 302 of the Indian Penal Code. While he was undergoing treatment in a hospital he was shot dead by an unknown person. In view of the unnatural death while in custody the Madhya Pradesh High Court awarded compensation to the next of kin of the victim.

Xx xxx xxx xxx xxx xxx xxx xxx

The need to compensate

54. The case law indicates that over the last several decades this Court and almost every High Court has relied on Article 21 of the Constitution and thought it appropriate to compensate the next of kin for an unnatural custodial death. The constitutional courts can go on delivering judgment after judgment on this issue and award compensation, but unless the State realizes that custodial death is itself a crime and monetary compensation is not necessarily the only appropriate relief that can be granted to the next of kin of the deceased, such unnatural deaths will continue unabated. Therefore, what is needed is a review of all prisons with a humanitarian nuance.

55. Over the last several years, there have been discussions on the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims - sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin

from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin.”

(Emphasis supplied)

17. Further, the undisputed fact remains that it was a case of unnatural death and that the agencies were required to determine the exact nature and cause of death. Apparently, the SIT has not considered the aspect of the possibility of committing suicide from the door where the offences stated to have been committed. Absence of an external mark of injury cannot always be a conclusive proof that it was not a case of homicidal death by any of the fellow inmates. Surprisingly, the SIT recorded a conclusion about deceased having committed suicide but offered no reasons or explanation as to why he chose to do so. Once investigation was being done, the SIT was expected to find reasons that led to the deceased committing suicide. However no such explanation has been offered.

18. At the same time there is no response about the fact that the cell door design could not have supported hanging since the horizontal bar was much lower and there was no place where he could be hanged, as per the version of the SIT. These crucial question have thus been left unanswered.

19. However, without delving much further in the matter, it is evident that disputed questions of fact arise for determination in the present case in relation to the cause of death, the circumstances under which such death ensued, the determination of compensation considering the income,

the age, the dependency, the multiplier as well the prospectus etc. and also the apportionment of compensation amongst the parties herein. All the disputed questions of fact cannot be gone into by this Court in exercise of its writ jurisdiction. However, to balance the equities, an interim compensation of Rs. 5,00,000/- is awarded in favour of the petitioners, 50% of the aforesaid amount shall be released in favour of the petitioner No.1-Asha Rani while the remaining 50% shall be released equally amongst the petitioners No.2 to 4.

20. The amount as awarded be released within a period of three months of receipt of a certified copy of this order.

21. The petitioners may, if so advised, take recourse to filing an appropriate proceeding before the competent Court for seeking compensation.

22. The award of the aforesaid interim compensation is thus without prejudice to the rights of the petitioner to take recourse to the remedy of civil law for seeking enhancement/grant of compensation. Needless to mention that the period during which the present petition remain pending before this Court shall be taken into consideration by the competent Court while determining the limitation.

The writ petition is accordingly disposed of.

(VINOD S. BHARDWAJ)

JUDGE

SEPTEMBER 25, 2023

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No